

## REMARKS

As indicated in the appeal brief filed concurrently, Applicants submit that a procedural error was made in this case, and that finality of the present Office Action (mailed July 8, 2003) should be withdrawn.

Specifically, in justifying finality of the present action, the Office states:

*Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 8-13-02 prompted the new ground(s) of rejection presented in this Office Action.*  
Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 609(B)(2)(i).

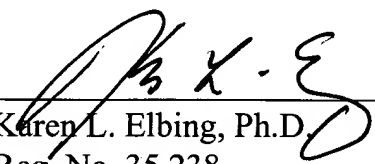
This statement is in error. Applicants' submission of an information disclosure statement was not made under 37 CFR 1.97(c), but rather was made under 37 CFR 1.97(d) with a statement under 1.97(e). The references submitted were first cited in a communication from a foreign patent office and were submitted to the USPTO within three months of receipt. In this situation, applying a final rejection is improper.

Applicants request that finality of the Office Action mailed July 8, 2003 be withdrawn, and that the Office fully consider Applicants' Reply submitted November 12, 2003.

No fee is believed due, but if there are any charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

Date: 2 June 2004

  
\_\_\_\_\_  
Karen L. Elbing, Ph.D.  
Reg. No. 35,238

Clark & Elbing LLP  
101 Federal Street  
Boston, MA 02110  
Telephone: 617-428-0200  
Facsimile: 617-428-7045